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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

June 26, 1998

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20554

Re: Ex Parte Presentation in Dockets 98-11, 98-26, 98-32 and 98-91 ✓

Dear Ms. Salas:

On June 22, 1998, I met with Dale Hatfield, Chief Technologist, and Stagg Newman, Director Technology Analysis, Office of Plans and Policy to discuss the attached materials in the above-referenced dockets. Later that afternoon, I met with Melissa Newman, Jonathan Askin and Jason Oxman, all of the Common Carrier Bureau's Policy and Program Planning Division, also to discuss the attached materials.

Please date-stamp the extra copy of this letter and return it in the enclosed envelope. Thank you for your assistance in this matter.

Sincerely yours,

Steven Gorosh  
Vice-President & General Counsel

cc: Janice Myles  
ITS

**NorthPoint Communications, Inc.**

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**Section 706 Petitions Review**

**NorthPoint Meeting with FCC**

**June 23, 1998**

# Introduction to NorthPoint

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- **A National Data CLEC**
- **Founded by An Experienced Team of CLEC Veterans**
- **Focused Exclusively on Delivering Dedicated Data Transport to Small and Medium-Sized Businesses**
  - Through Wholesale Agreements with Internet Service Providers and Other CLECs Nationwide
  - Currently Providing Fast, Affordable, and Reliable SDSL Service at 160, 416, 784, 1,040 Kbps to the Underserved Small Business Market
- **CLEC Authority Granted or Pending in 18 States**
- **Several Hundred Collocation Cages Purchased in 21 Key Markets**

# NorthPoint Timeline

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- 6/97: Incorporated
- 10/97: Technical Trial Initiated in Bay Area
- 3/98: Bay Area Customer Launch
- 6/98: Service to be Initiated in Los Angeles
- 7/98: Service to be Initiated in Boston
- 8/98: Service to be Initiated in New York

## Section 706 Position Summary

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- **ILEC Failures to Deliver Collocation and Loops Necessary for DSL Service Competition are Significant, Increasing, and the Primary Barrier to Increasing Broadband Alternatives**
- **ILEC 706 Petitions are Undocumented, Unconvincing, and Unnecessary to ILEC Provision of DSL Service**
- **The FCC Can Best Promote Section 706's Goal of Increasing Advanced Service Availability By Rejecting the ILEC 706 Petitions and Strictly Enforcing the '96 Act and the Local Interconnection Orders**

# **ILECs Are Failing to Deliver Collocation in a Timely and Cost-Effective Matter**

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- **Without Physical Collocation for CLECs, DSL Competition is Not Possible**
- **The Availability of Physical Collocation Space in Key Central Offices (“CO’s”) is Increasingly Limited**
  - Run on Space in Last Twelve Months by Facilities-Based CLECs
  - 59 Offices Closed in California Until Recently
  - New York: 19 of 43 Applications Rejected in December ‘97
  - NorthPoint Has Faced CO Rejections in Key Offices in Atlanta, SF, LA, Orange County, New York, Boston, Chicago, Philadelphia, Dallas ...
- **‘96 Act Requirement of Third-Party Evaluation of Space Limitation Claims Are Not Being Observed**
  - States Not Exercising Contemplated Authority
  - Important Safeguard As Demonstrated by FBC Petition in CA

# Excessive Collocation Intervals Are Serious Barriers to Deployment

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- **Interval for “Conditioned Space” is 4-6 Months Regardless of Work Requirements**
- **Interval for “Unconditioned Space” is 6 - 12 Month “ICB”**
  - Completion Dates Routinely Extended or Missed
- **1 - 4 Months to Get Quote Before Interval Begins**
  - SBC Took Almost 4 Months to Provide Quotes in 36 COs in Texas
- **US West Imposes Additional Six Month Delay**
  - Arbitrarily Requires CLEC Authority and Approved Interconnection Agreement Before Accepting Quote Request -- Adds Six Months or More to Start-Up DSL Providers
- **Total Wait for Collocation Cage Often Exceeds One Year**
- **No Parity Where ILEC May Move Equipment In At-Will**

# Excessive Collocation Charges are a Barrier to Deployment

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- **Non-Recurring Collocation Charges Range from 20K - 75K For Conditioned Space**
- **NRC for Unconditioned Space Routinely Exceeds 100K**
  - Refund Rules Make Collocation Prohibitively Expensive by Requiring First Mover to Pay All Conditioning Costs Up Front
- **Recent ILEC ADSL Retail Tariffs Do Not Reflect Any Collocation Charges**

# Collocation Rights Threatened by Arbitrary ILEC Limits on CLEC Equipment

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- **ILECs Impose Arbitrary and Inconsistent Rules With Impunity**
- **GTEC: Returns NorthPoint Collocation Applications in Florida Without Dialogue**
  - Threatens NorthPoint's First-Come First-Serve Right and Ability to Deploy Quickly; Based on Concerns Not Raised by GTEC-CA or any Other ILEC
- **Bell Atlantic and Ameritech Refuse to Allow NorthPoint's Remote Access Management Equipment**
  - BA Relented After NorthPoint Agreed to Let BA Monitor that Equipment Was Not Used for Switching; Apparently Not Enough for Ameritech

# Collocation Rights Threatened by Arbitrary NEBS Enforcement

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- **ILECs and CLECs Share Need for CO Equipment Testing in Order to Ensure Safety**
- **Bell Atlantic, Alone Among ILECs, Requires Compliance With NEBS Level Three Tests That Are Unrelated to Safety**
  - Delays Utilization of Innovative Equipment For Reasons (e.g., Reliability) Which Are of No Legitimate Interest to BA
  - Enforced In Discriminatory Manner; New CLEC Must Document Each Piece of Equipment -- BA and Resident CLECs Move Equipment in and out Without Meeting Same Standards
  - Bell Atlantic Has Been Extraordinarily Uncooperative in Suggesting Compliant Equipment Alternatives
    - e.g., Analog Modem, Fuse Panel Delays

# ILECs Are Failing to Deliver DSL-Capable Loops

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- DSL Service Requires “Clean Copper” Devoid of Bridge Taps, Load Coils, SLCs and IDLCs
- Only Ameritech and BellSouth Offer Unbundled DSL Loops
- SBC/Pacific and Bell Atlantic Only Offer Unbundled ISDN Loops
- US West Only Offers Unbundled Analog Loops With Excessive Conditioning Charges to Make “Digitally Compatible”
- Absence of Unbundled DSL Loops Increases Likelihood that DSL Service Will be Unavailable
- No ILEC Retail DSL Service Should be Allowed Prior to Availability of Unbundled DSL Loops
- Excessive Loop Charges (Ranging From \$5/mo - \$35/mo) Are a Barrier to Deployment

# Unilaterally Determined Spectrum Interference Policies Threaten DSL Competition

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## ■ SBC/Pacific Have Chosen ADSL Product Designed by Alcatel and Are Limiting the Provisioning of Alternate DSL Products

- Commissioned Study by TRI (a SWBT Affiliate) and Unilaterally Stopped Supplying CLEC Loops Over 14,000 Feet
- Have Issued Vague Guidelines and are Again Threatening to Limit NorthPoint DSL Loop Deployment
- Refusing to Provide NorthPoint and Copper Mountain (SDSL DSLAM Manufacturer) With Access to Alcatel Study to Document Accuracy of Study and Identify Steps for Limiting Interference
- Absurdly Anti-Competitive for SBC/Pacific to Unilaterally Impose Unique Standards Different from Industry Standards Bodies

# **ILEC Demands for Regulatory Relief Are Unsupported and Unnecessary for ILEC DSL Provision**

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- **DSL Technology Has Existed for Years**
  - HDSL Utilized for Late-Generation T-1s
- **Barrier to ILEC Deployment has Been ILEC Reluctance to Cannibalize Lucrative T-1 Market - Not Regulatory Barriers**
  - DSL is Delivering Data at a Fraction of Historical T-1 Charges
- **Nothing Prevents ILECs From Currently Competing for DSL Business**

# **ILECs Do Not Require InterLATA Authority to Provide DSL Service**

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- **Typical DSL Architecture Includes COs Connected to Regional Node Located in-LATA**
- **NorthPoint DSL Networks Do Not Currently Cross LATA Lines and Will Not Except in Unusual Instances**
- **Instructive that SBC/Pacific 706 Petition Focuses on DSL Without Requesting InterLATA Relief**
- **Counterproductive to Provide ILECs with InterLATA Relief Prior to Satisfaction of 271 Checklist Where Need For Relief is Not Apparent**

# ILECs Have No Need for DSL Pricing Relief

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## ■ GTE and SBC/Pacific DSL Tariff Filings Demonstrate That ILECs Already Have Excessive Pricing Authority

- Filings Lack Sufficient Detail to Determine Whether Charges Cover Costs
- Glaring Inconsistencies With State Cost Proceedings Suggests Tariffs Will Not Recover Costs of Service
  - GTE and Pacific Claim No Loop Costs in FCC Tariff but Are Arguing in Current CA Cost Docket that They Face Significant Incremental Cost in Provisioning Unbundled Digital Loops
- Serious Price Squeeze From Retail DSL Tariffs
  - GTEC Proposes Charging \$30/mo. for Retail DSL Service
  - CLECs Face \$19/mo. Wholesale Loop Price Plus Collocation Charges Before They Begin Recovering Cost of Equipment, Overhead or Profit
  - ILECs Must Be Required to Impute Loop, Collocation and OSS Charges to CLECs in Order Not to Crush Competition

# **ILECs Have No Need for Relief From Resale Requirements**

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- **ILECs Provide Cursory Statements Without Providing Any Documentation That Resale Obligations Would Impede Their Ability to Compete**
- **Resale Can be an Effective Safeguard Where CLECs Cannot Provide Service Due to Lack of Collocation Space or Unavailability of Suitable Loops**
- **Resale Can Be Effective Remedy Against Price Squeeze**
  - Absence of Resale Obligations Rewards Below-Cost Pricing Which Squeezes Facilities-Based Competition

# Conclusion

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- **The Commission Should Use Section 706 To Enforce, Not Gut, Existing ILEC Obligations**
- **The Commission Should Reject Unnecessary Demands for Additional Regulatory Relief**